

## **SECTION XXXI RESIDENTIAL OPEN SPACE – CLUSTER DEVELOPMENT** (Added March 2003)

This ordinance is adopted by the Town of Newton at the 2003 Town Meeting, in accordance with the authority as granted in New Hampshire Revised Statutes Annotated 674:16 and 674:21, procedurally under the guidance of 675:1, II and in accordance with RSA 12-K.

### **I. PURPOSE**

The intent of this ordinance is to provide a flexible method of residential development that is consistent with principles of sound planning and wise land use that are not specifically permitted in the current zoning ordinance. All developments seeking a conditional use permit shall be administered by the Planning Board to insure that Open Space - Cluster development opportunities do not adversely impact neighboring properties, or the citizens and Town of Newton. The Planning Board shall consider the following purposes and balance them accordingly during review of individual applications:

- A. Maintain and Preserve rural character of the Town of Newton by allowing an alternative residential development option which preserves large areas of open space, provides for visual buffers from existing roads and residential development, and permits farming opportunities on parcels of open space.
- B. Preserve large, contiguous parcels of open space throughout the town and particularly as found in the Newton Master Plan, land determined to be of significant importance for protection and preservation.
- C. Provide for a diversity of housing types, opportunities, and architectural styles.
- D. Encourage road design that will contribute to and enhance a rural atmosphere and maintain minimal safety design.
- E. Provide for connected corridors of open land throughout town for preservation of habitat, environmental resources, and public enjoyment.
- F. As part of an alternative for residential development, to require the clustering of homes in a manner that includes proximity in physical location while minimizing confusion over issues of property ownership.

### **II. CONDITIONAL USE PERMITS**

All Open Space-Cluster developments shall obtain a conditional use permit from the Planning Board. The conditional use permit shall clearly set forth all conditions of approval and shall clearly list all plans, drawings and other submittals that are part of the approval. Everything shown or otherwise indicated on a plan or submittal that is listed on the conditional use permit shall be considered to be a condition of approval. Construction shall not deviate from the stated conditions without approval of the modification by the Planning Board.

### **III. APPLICATION PROCEDURE**

Applications for conditional use permits for an Open Space - Cluster development shall be made in accordance with the procedures set forth in the relevant sections of the Subdivision Regulations of the Newton Planning Board.

### **IV. APPROVAL OF APPLICATIONS**

Prior to issuance of a building permit, the applicant shall acquire a conditional use permit as well as any other necessary Planning Board approval. A conditional use permit shall be issued only if an Open Space-Cluster development complies with all of the requirements of this section. The Planning Board may condition its approval on reasonable conditions necessary to accomplish the objectives of this section or of the Newton Master Plan, Zoning Ordinance, or any other federal, state, town resolution, regulation, or law, including but not limited to; a reasonable reduction in allowed density, a reasonable increase in required

frontage, setbacks, or any other requirement if necessary to accomplish said objectives. The conditional use permit is meant to provide flexibility, minimize adverse impacts, and allow the Board to participate jointly with the applicant to prepare a development that is consistent with this ordinance, regulations, and the Master Plan for the Town of Newton.

## V. GENERAL

The Open Space-Cluster development provisions of this ordinance provide applicants with an alternative development approach intended to promote flexibility and innovation in land planning. Within this context, the ordinances that are established are intended to be a minimum consideration of allowable impacts. Each tract of land possesses different, unique development characteristics and limitations, and the Open Space-Cluster development use allowed on any particular tract will be a function of innovative land planning and subdivision design interacting with the special characteristics and limitations of the site. The following definitions specifically apply to this Section of the Zoning Ordinance:

- a) Common Area: Any parcel or area of land and/or area of water set aside as a result of a cluster plan. The common area is designed for the benefit and enjoyment of the residents of a cluster development. These areas may contain accessory structures and improvements necessary and appropriate for the educational, recreational, cultural, social or other noncommercial / nonresidential / non-industrial uses, plus any utility services utilized by the owners of the common area.
- b) Conservation Land: Land given to a public body dedicated to conservation of forests, park land, etc., or to a private conservation trust, with the intent of preserving in its original ecological condition, safeguarding water supplies, or diminishing flood danger.
- c) Mandatory Home Association: A private non-profit corporation, association or other non-profit legal entity established by the developer for the benefit and enjoyment of the residents of the Cluster Development. Membership in said association shall be mandatory for property owners and made a required covenant in any deed issued or passed. It shall provide voting and use rights in the common area when applicable and may charge dues to cover expenses, which may include tax liabilities of the common area, recreational or utility facilities. Articles of Association or Incorporation must be acceptable to the Planning Board and by the Town Counsel and any other municipal, county, state agency, body, commission or department required by law to approve of the same.
- d) Open Space Easement: Land whose development rights have been legally restricted, either by deed or by public purchase of those rights. The easement may be so worded as to permit or restrict public access, to allow or disallow recreational development, and similar provisions. Easements are tied to the title of the land, regardless of its subsequent ownership.
- e) Public Open Land: Land purchased by or given to the Town of Newton for parks, playgrounds, or an undeveloped open space, generally with the intention of making it accessible for public use.
- f) Yield Plan: A conventional layout of roadways and lots in accordance with the dimensional requirements of underlying zoning district.

## VI. LOT SIZE AND FRONTAGE

The minimum lot size for an Open Space-Cluster development is 20 acres. The minimum frontage for the development shall be a contiguous 150 feet and of sufficient length to provide safe access for a right-of-way of at least 50 feet. At least one access shall be within the minimum frontage. The minimum frontage and access shall be within the Town of Newton. Frontage lands on roads existing at the time of application shall be preserved as buffers to the maximum extent possible in addition to all required setbacks. After the passage of this ordinance, any parcel that subdivides more than 50% of the frontage away from the parent parcel shall not be eligible for an Open Space - Cluster development for a period of 4 years from the date of the subdivision approval.

## VII. BASELINE DENSITY

Development density shall be determined by one of the following two methods to be chosen by the applicant:

a) Zoning Formula – The following formula shall be used to determine the baseline density:

$$\begin{array}{r} \text{Total Parcel Area} \\ - \text{Unbuildable land} \\ \hline \text{Area Remaining} \\ \times .9 \text{ (subtract 10\% for roadways)} \\ \hline \text{Net Area} \end{array}$$

Net area divided by lot size for zoning district = Baseline Density

Example #1:      100 acres total  
                     - 26 acres Unbuildable land  
  
                     74 acres (buildable)  
                     x .9 (street factor)  
  
                     66.6 acres net  
                     66.6 divided by 2 acres = 33.3 (rounded down to 33 units)

Example #2:      20 acres total  
                     - 3 acres Unbuildable land  
  
                     17 acres (buildable)  
                     x .9 (street factor)  
  
                     15.3 acres net  
                     15.3 divided by 2 acres = 7.65 (rounded up to 8 units)

For the purposes of this formula “Unbuildable land” shall consist of the following types of land:

- 1) Wetlands as defined elsewhere in this ordinance or if not so defined, as found in state law.
- 2) Slopes exceeding a grade of 25%, or soils subject to slumping.
- 3) Floodways and floodway fringe within the 100-year floodplain as shown on official FEMA maps.

b) Yield Plan - The yield shall be reviewed and approved by the Planning Board in accordance with the following:

- 1) The yield plan shall incorporate soils information sufficient to determine estimated lot sizes by soil type.
- 2) The yield plan shall incorporate roads and rights-of-way that provide for a layout that corresponds with existing state and federal laws, town ordinances, and subdivision regulations, including but not limited to minimization of wetland crossings, road length requirements, right-of-way widths, and safe sight distance for entrances.
- 3) The yield plan is meant to be conceptual in nature but must be realistic and not show potential house sites or streets in areas that would not ordinarily be legally permitted in a conventional layout.
- 4) In addition to the above, the yield plan shall include, basic topography, wetlands, floodplains,

steep slopes (greater than 25%), soils subject to slumping, and contiguous non-wet areas, and other areas of land where it is not feasible to accommodate building sites and individual septic systems.

- 5) In order to show that the yield plan is reasonably achievable, 20% of the lots, randomly distributed throughout the yield plan, shall indicate one test pit which complies with all local, state, and federal requirements, including but not limited to, depth to estimated seasonal high water table, setbacks to lot lines and structures, and wetland setbacks. These lots shall be selected by the applicant, however, the Planning Board, at its discretion, may seek additional lots for testing if doubts arise.
- 6) The yield plan shall comply with conventional subdivision standards and shall not require a variance or waiver from the existing ordinances or regulations in order to achieve the layout supporting the proposed density.

#### VIII. DENSITY BONUS

The minimum density bonus, regardless of percentage achieved, shall be one lot. If required criteria are met, the Newton Planning Board may award the development an additional density bonus. The total density bonus awarded to a particular development authorized under this section for innovative protection bonuses shall not exceed 35% of the baseline density. The density bonus shall be applied to the number of lots achievable under the baseline density. Where a final number is greater than .5, the density number may be rounded up to the next whole number. In no event shall the total density bonus awarded exceed the soil based carrying capacity for the entire parcel.

#### IX. DEVELOPMENT YIELD

The total yield for residential Open Space-Cluster development shall be determined by baseline density plus all density bonuses. The resulting number multiplied by a factor of four (4) shall indicate the number of bedrooms allowed. In no event shall the total density exceed the soil based carrying capacity for the entire parcel.

#### X. STANDARDS FOR APPROVAL

All standards below must be met or impacts mitigated to the satisfaction of the Planning Board prior to the granting of a Conditional Use Permit.

- a) The permit is in compliance with this ordinance and is in the public interest.
- b) There will be no greater diminution of neighboring property values than would be created under any other use or development permitted in the underlying zone.
- c) That there are no existing violations of the Newton zoning ordinance on the subject property.
- d) That the character of the area shall not be adversely affected. This determination, to be made by the Planning Board, shall be made by considering the following aspects of the surrounding area.
  - 1) Consistency of architecture, except for single-family detached development, determined through analysis of the following:
    - Roof pitches;
    - Siding types;
    - Architectural styles of residential structures;
    - Proportional aspects of facades, building locations on lots;
  - 2) Transportation, determined through analysis of the following:

- Access for safety vehicles onto the site, within the site, and to individual houses;
  - Capacity of nearby and affected intersections, and transportation corridors;
  - Cost for municipality to maintain roadways.
  - Layout, width, and construction of roadways on the site.
- 3) Protection of natural resources, determined through analysis of the following:
- Protection of environmentally sensitive areas, including but not limited to, wetlands, shoreland buffers, wildlife corridors, significant groundwater resources, etc.;
  - Maintenance of viewsheds and other visually appealing aspects of the site;
- 4) Protection of cultural resources, determined through analysis of the following:
- Establishment of new and protecting existing trailways for travel;
  - Protection of historic buildings or significant historical landscapes;
  - Establishment, protection and promotion for agricultural uses of the site.
- e) That granting the permit will not result in undue municipal expense.
- f) That the proposed development will be constructed in a manner compatible with the spirit and intent of the Newton Master Plan and Zoning Ordinance.
- g) That the capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted. Mitigation of these impacts by the developer can be properly considered in granting of a conditional use permit.

## XI. OTHER REGULATIONS APPLICABLE

The Planning Board may adopt sections of the Subdivision Regulations not pre-empted by this ordinance which shall apply to the Open Space - Cluster Development, including the right to waive such regulations. Where not specifically pre-empted by the provisions of this ordinance the requirement that is more restrictive shall apply. The Planning Board shall determine if pre-emption is intended by the provisions of this ordinance, and/or what requirement that is to apply, is more restrictive. All units shall be built in accordance with applicable federal, state and local building codes.

## XII. MINIMUM OPEN SPACE REQUIREMENTS

The minimum percentage of land that shall be designated as open-space shall be as specified below:

- a) A minimum of forty percent (40%) of the total tract area, after deducting the following kinds of unbuildable:
- 1) Wetlands as defined elsewhere in this ordinance or if not so defined, as found in state law.
  - 2) Slopes exceeding a grade of 25%, or soils subject to slumping.
  - 3) Land under permanent easement prohibiting future development (including easements for drainage, access and utilities).
  - 4) Floodways and floodway fringe within the 100-year floodplain as shown on official FEMA maps.
- b) A minimum of 25% of the total required open space land must be useable uplands and reasonably available for recreational purposes, provided however, that no more than 50% shall be utilized for such purpose in

order to preserve a reasonable proportion of natural area on the site.

- c) No portion of public utility easements, of any kind, may be considered part of the minimum required open space.
- d) Open Space Layout. Open space land shall be designated as undivided parcels to facilitate easement monitoring, enforcement, maintenance, and to promote appropriate management by a single entity according to approved land management standards.
- e) As part of the application an open space plan shall be submitted showing clear delineation of parcels of open space land that is not to be developed. The open space plan shall be recorded at the Registry of Deeds and shall indicate that development is restricted from the open space in perpetuity.
- f) The minimum required open space land shall be placed in undivided preserves that equal or exceed 3 acres. All parcels between 3 and ten acres shall have a length to width ratio equal to or less than 4:1; except such areas specifically designated and constructed as village greens, ball fields, upland buffers to wetlands, water bodies or water courses, or trail links. Areas less in size or dimensional requirements may be considered common land left open, but shall not be included in the minimum required open space calculation.
- g) Open space shall be directly accessible to the largest practicable number of lots within the development.
- h) Safe and convenient pedestrian access to open space shall be provided from all lots not adjoining the open space
- i) Such land shall be preserved in perpetuity through deed restriction or conservation easement, and designated on the approved and recorded plat. Such restriction shall be reviewed by Town Counsel and approved by the Planning Board.
- j) The open space and/or common area within a cluster development shall be owned by and bound by one or more of the following:
  - 1) Mandatory Homeowners Association, which may use it for common recreational facilities or may designate it as Open Space, or may grant a public body an Open Space Easement.
  - 2) A public body which shall use it as Conservation Land or Public Open Land.
  - 3) Such designation must be made prior to approval of the subdivision application by the Planning Board; such lands shall be held in such type of legal entity as the Planning Board deems appropriate.

### XIII. DENSITY BONUS

- a) Where the proposed Open Space Cluster plan shows 50% or more of the total parcel as open space protected as such in perpetuity, the development may be awarded a density bonus of up to 10%.
- b) Public Access Bonus - Where the public is granted access to the open space, the development may be awarded a density bonus of up to 10%. The nature of public access required to trigger this bonus is pedestrian traffic. The instrument granting access, acceptable to the Planning Board, may reasonably restrict the use of motorized vehicles.
- c) Agricultural Lands and Use Bonus - Where the development protects agriculturally valuable lands and provides permission for their use as such in perpetuity, the development may be awarded a density bonus of up to 10%. The Planning Board shall, on a case-by-case basis, determine the bonus percentage by considering the size of the project and the number of acres of farmland preserved. The open space portion preserved for agricultural use must amount to a minimum of

50% of the minimum required open space. The instrument granting use, acceptable to the Planning Board, may reasonably restrict the type or intensity of farming to occur to prevent nuisances.

- d) Additional Protection Bonus - Where the development is able to protect unique characteristics, including and limited to the following:
- 1) Viewsheds, which are lands or corridors of land that contribute to the visual landscape of the town, including items such as open fields containing stonewalls, mature stands of trees, visible water bodies and their natural buffers.
  - 2) Historically significant buildings and landscapes, identified as such in the Master Plan, that include buildings and associated uses that are maintained and visually separated from the developed portion of the cluster development. Structures or landscapes not identified as such through the Master Plan may be determined by sufficient evidence presented to the Planning Board during review of the cluster development. Such evidence may include Heritage Commission comment, listing or eligibility for listing on the National Register of Historic Landmarks, or other qualified statements of historic value.
  - 3) Valuable wildlife and environmental areas that are otherwise buildable land, proven as such through an environmental resource inventory by a qualified wildlife biologist specializing in either flora or fauna. Reports by a wetlands or soil scientist shall not satisfy this criteria.
  - 4) Linking open space parcels or trail corridors through the site with existing trails or open space networks. The beginning of such a network or trailway may be considered as linking where reasonable opportunity is present for establishing through corridors into neighboring parcels and provided that Conservation Commission comment is in favor of this location.

If the development protects one or more of the above it may be awarded a density bonus of up to 10%. The development must provide for the protection of these resources in perpetuity and trail corridor protection must allow for reasonable public access.

- (e) Density bonus for frontage lots. Where a development is proposed such that a potential lot with the required legal frontage, on a roadway existing at the time of application within the Town of Newton, for the underlying zone has been preserved in a natural condition, the Open Space-Cluster development shall receive an additional bonus of one (1) lot.

#### XIV. GENERAL REQUIREMENTS

- A. Uses – Only residential uses shall be permitted in the Cluster - Open Space Developments.

1. Single-family detached homes are permitted.
2. Multi-family units shall be permitted up to a unit count of 4 per building or structure. These are units that are structurally joined and share walls with no yard between units.

- B. Frontage – The following frontage requirements shall apply.

1. Each single-family lot or unit shall have 50' of frontage on interior roadways.
2. Duplex units, sharing a common wall shall have 75' of frontage.
3. Multi-family unit structures, sharing a common wall shall have 100' of frontage for three (3) unit structures and 125' of frontage for four (4) unit structures.

- C. Setbacks – The following setbacks shall apply to all residential structures within the development.
1. Setbacks from exterior property lines of the entire parcel shall be 50' for single-family detached units, with an additional 15' per unit for multi-unit structures (e.g. 4 unit attached = 110').
  1. 30' setback from the edge of pavement for roadways within, and part of, the development.
  2. 35' structural separation for all single family unit structures within the development.
  3. 50' structural setback for multi-family units from all other structures.
  4. 10' structural setback from all lot lines.
- D. All developments shall contain some form of lot delineation or lines that designate a reasonable amount of land attributable to each particular structure.
- E. Utilities – All utilities serving the development shall be underground.
- F. Parking – Off-street parking shall be provided for two (2) cars per unit plus a minimum of a one-car garage for each unit.
- G. Sidewalks – The Planning Board may require sidewalks if deemed appropriate for the proposed development.

#### XV. LEGAL REVIEW

The legal review of the proposed development shall be conducted under the conditions delineated herein:

- a) Any condominium agreements, deed restrictions, organizational provisions for a Homeowner's Association, or any legal entities providing for ownership of individual dwelling units and a sharing of certain utilities, open space, common areas, and auxiliary facilities and structures, must be approved in writing by the Planning Board and by Town Counsel and any other municipal, county, or state agency, body, commission or department required by law to assure the same.
- b) The developer will submit a suitable legal instrument which to the satisfaction of the Board and/or Town Counsel will assure that such open space and/or common land will continue to be used for conservation, park or recreation, and shall not be disposed of by sale or otherwise except to any organization established for the purpose of owning and maintaining such open space.
- c) Such developer shall also provide for adequate maintenance of such area set aside for conservation, park, or recreation. Such developer shall provide for the insertion in all deeds, in a form approved by the Planning Board and/or the Town Counsel any and all safeguards and conditions suitable to carry out the purposes of these regulations.
- d) Such legal instruments shall also provide that the Town of Newton, its agents, servants, and employees, may, without liability, enter upon such land held for conservation, park or recreation and remove, or cause to be removed, any object, or condition which may be deemed to be a nuisance or in the nature of a nuisance.

#### XVI. EXPIRATION

Any Conditional Use Permit shall expire if active and substantial development or building has not begun on the site by the owner or the owner's successor in interest in accordance with the approved plat within 12 months after the date of approval.



As part of its approval of a plat or plan, the Planning Board may, with due regard to the scope and details of a particular project, specify the threshold level of work which shall constitute "active and substantial development or building" for purposes of fulfilling this paragraph. In such cases, a new application for a Conditional Use Permit must be completed.

XVII. Strict adherence to these provisions shall not be construed as establishing a legal right to a conditional use permit for a cluster development. Those who wish to pursue their development rights to a certain use or development of land should consider developing their land with the permitted, conventional subdivision approaches, or through the variance procedure as provided for by New Hampshire law.

#### XVIII. CONDITIONS

The Planning Board may impose higher standards than allowed by this Section when they determine that because of special site and land conditions, an adverse impact would be created by allowing development to be built to the standards delineated in this Section.

Dwelling units approved under this ordinance shall be subject to any applicable impact fees per the Newton Zoning Ordinance.

### **SECTION XXXII ELDERLY HOUSING (OVERLAY)** (Added March 2003)

#### AUTHORITY

In accordance with RSA 674:21 c, f, h and k, this ordinance is adopted to permit the establishment and construction of elderly housing in Newton. Consistent with the provisions of RSA 674:21, the Planning Board is hereby authorized to grant a conditional use permit for elderly housing in accordance with the provisions of this ordinance.

#### PURPOSE

This ordinance seeks to address the housing needs of the elderly and to encourage the development of such housing to meet the needs of persons who have lived in Newton and who would like to continue to reside in Town, but who are no longer able or interested in residing in and maintaining a conventional residence. The ordinance encourages the development of elderly housing by permitting such housing to be developed at a unit density and with a certain amount of planning flexibility that is greater than that permitted for conventional single family housing development.

The Townspeople recognize that one aspect of elderly housing development is that the housing built will continue to be put to this use in perpetuity, consistent with restrictive covenants and consistent with the provisions of state and federal law that permit housing units to be restricted by age.

#### I. DEFINITIONS

- a. Elderly Housing Development: Housing contained in a development intended for occupancy by people 55 years of age and older, and which features small single family units, apartments and/or condominiums.
- b. Bedroom: A room with an interior door that is primarily intended for sleeping.  
(Amended March 2012)

#### II. GENERAL STANDARDS

All elderly housing developments shall conform to the following standards:

- a. Elderly housing developments shall be permitted only in the Residential zoning district. All elderly housing developments shall contain a minimum of 20 acres and shall have at least one hundred fifty feet (150') of frontage on a public road.

- b. The total number of elderly housing units in the Town of Newton shall not exceed ten percent of the total dwelling units then existing in the Town of Newton. The number of existing elderly housing units shall not be included in the calculation of this ten percent. (Amended March 2007)

The maximum allowable number of bedrooms allowed on a site is four bedrooms per acre of upland.

- c. Dwelling units shall be specifically designed to provide housing for elderly residents. Units shall have a maximum of two bedrooms, may not exceed thirty-five feet (35') in height, and may be either one or two stories. Buildings shall be separated by a minimum space of thirty-five feet. No building shall exceed 10,000 square feet in footprint. No individual unit shall exceed 1,500 square feet of living space, and no single-family building shall exceed 1,500 square feet in footprint. A maximum of six units shall be allowed per building.
- d. Adequate on site space shall be provided for off-street parking for two vehicles per dwelling unit.
- e. Building massing and style shall be distinctly residential in character, drawing on historical design elements that are consistent with rural New England architecture and which feature characteristics such as pitched roofs, clapboard or shingle siding, raised panel exterior doors and divided light windows. All such elderly housing developments shall be designed and constructed to compliment and harmonize with the surrounding areas, particularly with regard to the size and scale of the development and its prominence and visibility to the community generally and to surrounding neighborhoods in particular.
- f. Except as noted in the proviso contained in this sub-paragraph, all such elderly housing developments shall comply in all respects with the Town of Newton's Zoning Ordinance, Site Plan Review Regulations and/or Subdivision Regulations – except however, that elderly housing units shall not be subject to school impact fees per Newton Zoning Ordinance section XXXVI.
- g. Dwelling units may be owner-occupied or rented. However, all permanent residents of all elderly housing units shall be at least 55 years of age.  
The over 55 age restriction shall not apply to employed caretakers as defined in this ordinance as a person who stays overnight to provide nursing or physical assistance care to a unit resident in accordance with a medical evaluation that such care is necessary or to a family member who provides such care. No more than one caretaker whether a family member or an employee may stay with the permanent resident. (Added March 2009)
- h. The design and site layout of all such elderly housing developments shall compliment and harmonize with the rural character of the Town of Newton, shall maximize the privacy of dwelling units and preserve the natural character of the land.
- i. All such elderly housing development shall make provision for pedestrian access within the development and, to the extent possible, to off-site community facilities.
- j. All such elderly housing developments shall be landscaped to enhance their compatibility with surrounding areas, with emphasis given to the utilization of natural features wherever possible.
- k. The perimeter of all such elderly housing developments shall be treated with a landscaped buffer zone of a minimum of twenty-five feet (25') which may consist in whole or in part of existing natural growth.
- l. The Planning Board may require that all roads within the development shall be privately owned and built according to Town standards.
- m. The Planning Board retains the right to approve the specific road and structure layouts for the

purpose of the health, safety, and welfare of the town as well as for efficiency and aesthetic variety and quality of design.

- n. The applicant shall demonstrate that all units have been designed to meet the needs and accessibility requirements of the elderly as reflected in the HUD's Fair Housing Accessibility Guidelines.

All units shall be built in accordance with applicable federal, state and local building codes.

### III. COMMON LAND/OPEN SPACE

In every Elderly Housing development, common land/open space shall be set aside and covenanted to be maintained permanently as open space. The required amount of open space for all Elderly Housing developments shall be no less than 25% of the buildable area of the development. Buildable area is defined as all soils, excluding poorly and very poorly drained soils, alluvial soils (subject to flooding), water bodies, and slopes greater than 25%.

- a. Use of Common Land. Such common land shall be restricted to open space recreational uses such as park, swimming pool, tennis courts, golf course, or conservation. While the setbacks, front, rear, and side, are considered part of the common land, none of the above uses shall be allowed within these areas, nor any other uses that would disturb the natural vegetation within these areas. These restrictions of the use of the common land (including the landscaped buffered area), shall be stated in the covenants running with the land.
- b. Access to Open space/common land. Such common land shall have suitable access to a road, or walking trail, within the development.
- c. Protection of Common Land. Open space, common areas, common facilities, private roadways, and other features within the Elderly Housing development shall be protected by covenants running with the land and shall be conveyed by the property owners to a homeowners association so as to guarantee the following:
  - i. The continued use of land for the intended purposes.
  - ii. Continuity of proper maintenance for those portions of the development requiring maintenance.
  - iii. The availability of funds required for such maintenance.
  - iv. Recovery for loss sustained as a result of casualty, condemnation or otherwise.
  - v. Creation of a homeowners association or tenancy-in-common or similar form of ownership, with automatic membership and obligation of the residents of the Elderly Housing development upon conveyance of title or lease to single dwelling units. Homeowners association, tenancy-in-common, or similar form of ownership shall include lien provisions and shall be subject to review and approval by the Planning Board.

- IV. It shall be the responsibility of the developer/builder of each such elderly housing development to establish a Home Owner's Association and to prepare and adopt appropriate Articles and By-Laws which are to be submitted in advance to the Planning Board and Town Counsel for their review and approval. In preparing the Articles and By-Laws, particular consideration shall be given to accommodating the unique needs of the elderly citizens and to ensuring that residents of such developments are guaranteed adequate and appropriate services. The creation of the Home Owner's Association and the Articles and By-Laws shall be at the sole expense of the developer/builder and the costs of the review by the Planning Board and Town Counsel shall also be born by the developer/builder. Any association formed for the purpose of elderly housing must have stipulated in their By-Laws and Declaration of Covenants that the Association will at all times be in compliance with Newton's ordinances governing elderly housing, as amended.

The Applicant/Owner shall incorporate a written enforcement mechanism satisfactory to the Planning Board and its legal counsel whereby on an annual basis, a written age based census of the existing

Occupants shall be provided to the Board of Selectmen. Upon any change in ownership or tenancy, the age of any new Occupants shall be given to the Board of Selectmen within thirty (30) days of tenancy/ownership changes.

- V. The Planning Board shall maintain and exercise the authority to approve or disapprove all proposed elderly housing developments. The Planning Board shall act reasonably in exercising such discretionary authority but shall take into consideration such factors, for example, as: the health, safety and general welfare of the citizens of Newton; the aesthetic impact on immediately surrounding areas; whether the design is adequate to meet the unique needs of elderly residents; whether the Articles and By-Laws operate to serve the unique needs of elderly residents; the burdens created by additional demands on Town services; and whether the proposed development complies with the requirements of this Elderly Housing Ordinance, as well as, with the requirement of Newton's Zoning Ordinance and Subdivision and Site Plan Regulations.
- VI. Residency restrictions for residential projects approved under the Elderly Housing Ordinance shall be accomplished by restrictions recorded in deeds, Condominium Declarations, and/or other documents recorded at the Rockingham County Registry of Deeds. All deeds and covenants shall be subject to review by Town Counsel at the sole expense of the developer/builder, and shall be approved by the Planning Board. Covenants shall expressly provide that they may be specifically enforced by the Town, whether by injunction relief or otherwise. Covenants shall be signed by the Planning Board, and shall contain language specifying that Board approval is required for any subsequent changes to the covenants. Covenants shall expressly provide that they shall not be amended or modified, nor waivers granted there under, without the prior written approval of the Planning Board.
- VII. The following terms shall have the following meanings for the purpose of interpreting these Elderly Housing Regulations:
- Elderly Housing Development: Housing contained in a development intended for occupancy by people 55 years of age and older, and which features small single family units, apartments and/or condominiums.
  - Bedroom: A room with an interior door that is primarily intended for sleeping. (Amended March 2012)
- VIII. The Planning Board may grant waivers from the standards set forth in this ordinance in its discretion to encourage this type of housing development provided that the general purposes of the ordinance are satisfied.

### **SECTION XXXIII CONDOMINIUM CONVERSIONS** (Added March 2007)

#### **1. PURPOSE**

The purpose of this article is to provide regulations for the conversion of any existing structure to condominium ownership in any zoning district in the Town of Newton. Such conversion shall require Planning Board approval of a special use permit in accordance with RSA 356B:5 following a public hearing noticed per RSA 675:5. Approval shall be granted only if all the following conditions are met:

- A. A complete set of site plans and floor plans, as well as a complete set of all condominium documents must be filed with the Planning Board. The plan shall show the location of all utilities on the site, and shall indicate the location of all water connections and the shutoff valve for each unit. The Planning Board shall establish a schedule of fees for its review and may promulgate regulations related to carrying out its authority under this ordinance.
- B. The septic system standards of the NH Water Supply and Pollution Control Division existing as of the date of the request for condominium conversion must be met or exceeded by all systems used by the units associated with the condominium conversion, and a certificate to that effect must be filed with the Planning Board based on review of

Town records by the Building Inspector and onsite inspection of systems by a professional engineer, and, a soil scientist if the existing system is undersized under current WSPCD standards.

- C. Drinking water supplies from groundwater shall be protected by restricting land use and prohibiting all activity, including but not limited to the maintenance of any sewer, sewage or waste disposal system, detrimental to water quality and quantity, within the protective radii based upon the average daily demand on the system as follows:

<u>System Demand</u> <u>(gallons per day)</u>	<u>Protective Radius</u> <u>(in ft from source of supply)</u>
400	85
800	125
1200	150
1600	175
2000	200

- D. The responsibility for maintenance, operation, replacement and protection of the water supply and sewage disposal systems shall be clearly established as that of the Declarant or Association of unit owners or, in default of such obligation by the Declarant or Association, then by the individual owners subject to reimbursement from the Association or the Declarant as the case may be, and a statement to this effect shall appear in the condominium Declaration. The deed to each condominium unit shall be subject to the declaration containing these restrictions. In the case of an Association of land owners, a copy of the Articles of Association shall be submitted to the Board.
- E. The Declaration and the Articles of Association shall specify that in no event shall the Town have any obligation for maintenance, operation, replacement or protection of the water supply and sewage disposal systems. If for any reason the Town is required to undertake any such obligation, it shall be held harmless and fully and completely indemnified for all cost and expense, including reasonable attorney's fees incurred. The obligations to hold harmless and indemnify shall be joint and several on the part of each unit owner not the Association. The Town shall be entitled to a lien for its protection which shall attach and may be enforced in the manner of the lien for condominium assessments described in RSA 356-B or its successors.
- F. The off-street parking requirements of the Town of Newton existing as of the date of the request for condominium conversion must be met.
- G. The proposed conversion to condominium ownership shall not adversely affect surrounding properties.
- H. The proposed conversion to condominium ownership must be found to be in the public interest.
- I. The individual commercial or residential units which are the subject of an application for a special permit for condominium must, at the time of the application for condominium conversion, exist as legal units pursuant to the land use and building ordinances of the Town of Newton. The burden shall be on the petitioner to demonstrate that the units sought to be converted conformed to said ordinance now or in the case of a valid nonconforming use at the time of their construction.

#### Checklist for Condominium Conversion

1. Complete set of site plans and floor plans, as well as a complete set of all condominium documents
2. Certificate showing that the septic system standards of the NH Water Supply and Pollution Control Division have been met or exceeded by all systems used by the units associated with the condominium conversion
3. Drinking water supplies from groundwater protected by restricting land use and prohibiting all activity, including but not limited to the maintenance of any sewer, sewage or waste disposal system, detrimental to water quality and quantity, within the protective radii based upon the average daily demand on the system
4. Responsibility for maintenance, operation, replacement and protection of the water supply and sewage disposal systems shall be clearly established
5. Off-street parking requirements met
6. Proposed conversion to condominium ownership shall not adversely affect surrounding properties
7. Proposed conversion to condominium ownership must be found to be in the public interest
8. The individual commercial or residential units must, at the time of the application for condominium conversion, exist as legal units